UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL WARD,

Plaintiff,

v.

CITY OF REDDING, et al.,

Defendants.

No. 2:24-cv-0978 TLN AC PS

FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding in this matter pro se, and pre-trial proceedings are accordingly referred to the undersigned pursuant to Local Rule 302(c)(21). Defendants move for dismissal of the operative First Amended Complaint pursuant to Federal Rule of Civil Procedure Rule 12(b)(6); and/or Judgment on the Pleadings pursuant to Rule 12(c); and/or a More Definite Statement pursuant to Rule 12(e); and/or to Strike pursuant to Rule 12(f). ECF No. 15. Plaintiff opposed the motion. ECF No. 17. Defendant replied (ECF No. 18), and later submitted a request for judicial notice of documents in support of the motion to dismiss. ECF Nos. 19 (request), 20 (documents). For the reasons that follow, the undersigned recommends the motion to dismiss be GRANTED and that this case be closed.

I. Background

A. The First Amended Complaint

Plaintiff's operative First Amended Complaint ("FAC") presents six putative causes of

action: (1) violation of the Tom Bane Civil Rights Act; (2) violation of the First Amendment right to videotape the police; (3) violation of the Fourth Amendment; (4) violation of the Fifth Amendment right to remain silent; (5) race discrimination in violation of the Fourteenth Amendment; and (6) violation of the Americans with Disabilities Act and §504 of the Rehabilitation Act. ECF No. 5 at 2-17.

Plaintiff's case arises out of a traffic stop that occurred on November 4, 2023, at approximately 8:00 p.m. ECF No. 5 at 1. Plaintiff was pulled over by Officer Dahnke, who informed plaintiff that he was being pulled over for driving without a front license plate. ECF No. 5 at 6. Plaintiff did have a front license plate. Id. According to the operative complaint, "Body Camera shows Officers Dahnke, and Upshaw suspiciously pulling Plaintiff over in a dark secluded area of Redding under a bridge next to a parking lot away from the general public, to keep from being recorded by bystanders" in a "calculated move." Id. "The Officers Body Camera video shows The following Officer Upshaw walking up to another officer (Unidentified) arriving on scene not being truthful with his fellow officer an African American cop from what it appears to be on video, audio recorded conversation between both, officer Upshaw stated 'He's pulling the race card, he says my partner and I are racially profiling him,' other officers African American 'He Black'?, Upshaw 'Yes'." Id. at 6. Plaintiff refused to identify himself to the officers, invoking his Fifth Amendment right to be silent. Id. at 10.

One of the officers stated they believed plaintiff was Michael Smith from Maryland and that plaintiff was unlicensed because the vehicle identification number came back registered to a Michael Smith from Maryland, and that the officers were waiting on a photo because plaintiff wouldn't identify himself. Id. at 6. However, plaintiff contends that "Body Camera Footage audio can be heard between dispatch (SHASCOM-911) and Upshaw where SHASCOM 9-11 identified the plaintiff vehicle is registered to Michael M Ward . . . , registration current, insurance Valid, no active warrants, no probation, no criminal history." Id. at 7.

Plaintiff alleges he attempted to invoke his First Amendment right to record the stop, but "video camera footage, and audio shows Officer Dahnke" telling plaintiff to turn off the phone and put it down. Id. at 4. Then, "documented on camera, the officers Byron Upshaw, Jacob

Gutrdig, and Chace Arnold forcefully participated knocking plaintiffs phone out of plaintiffs right hand, breaking plaintiffs arm, with the intent to prevent plaintiff from ever being able to use that arm again, using excessive force." Id. at 4-5.

Plaintiff alleges that "video, and audio evidence the Officer's Dahnke, Upshaw, Townelsy are being witnessed Verbally threatened to use Excessive force beyond what is necessary on the Plaintiff to pull him out of his vehicle, and placed the Plaintiff under false arrest instead of simply asking the Plaintiff to step out, tum around, and to put his hands up" and that "Officer Upshaw, who was caught on his own axon body camera video not being untruthful with his supervisor about the true identity of the plaintiff, after the Plaintiff identified himself to both officers by name as documented on body camera, after the officers identified the plaintiff Officer Upshaw created a fictious suspects name, falsifying Plaintiffs identity to get other officers involved in carrying out an unlawful arrest of the Plaintiff, this is done as a mechanism to cover up the misconduct of both Upshaw, and Dahnke." Id. at 3.

During the interaction, "it is documented on video plaintiff's vehicle was completely shut off, hands on the steering wheel recording the interaction with the supervisor, 10 minutes past, video shows the supervisor opening Plaintiffs car door, as 4 cops rush plaintiffs vehicle (swat style), using Excessive Force by participant Officers Upshaw, Chase Arnold, Guterding in pulling the Plaintiff out of his vehicle[.]" Id. at 8. A supervising officer told plaintiff that he was not being charged with any crime. Id. The officers then used flashlights to search plaintiff's vehicle. Id. Plaintiff told the officers that they did not have his consent to search his vehicle. Id. at 9. Plaintiff alleges "documented on video, and screenshot captured shows the same officer Upshaw unlawfully seizing (theft of property) the Plaintiffs only car key, removing it from the key chain that contained Plaintiffs house keys, and intentionally threw them onto the ground as gathered as video evidence, the officer intentionally did perform this act out of malice, as a means to deprive the Plaintiffs permanently of his vehicle during the time it was being unlawfully impounded, and towed." Id. at 8-9.

Plaintiff alleges that "the officer (older Caucasian male) who assisted [Defendant] Dahnke in booking the Plaintiff into Shasta county jail is on audio comparing the plaintiff to Jay-Z said

that I look like a famous gangster rapper, that is discriminative and prejudicial, because the Plaintiff looks nothing like Jay-Z, Plaintiff is no rapper, nor is the Plaintiff affiliated with any gangs." Id. at 11.

Plaintiff goes on to allege several separate interactions with Redding police officers. Plaintiff alleges that on April 7, 2023, Redding officers followed him home and ran his license plates, "until The officer did a U-turn . . . speeding off when the officer noticed I was recording him or her." Id. at 14. Plaintiff further alleges that on March 21, 2023, he was confronted by an officer while getting gas, and plaintiff was asked to identify himself. Id. The officer refused to identify himself to plaintiff. Id. Plaintiff next alleges that on January 17, 2024, he was followed by Redding Police for 20 minutes before the officer quickly switched lanes and drove away. Id. at 15. Plaintiff goes on to allege that on February 8, 2024, he was parked when two officers approached a nearby white woman and asked the woman if plaintiff was trying to sell her drugs or if he was harassing her, but the woman said she didn't know the plaintiff, and the police ultimately left. Id.

II. Analysis

A. Legal Standards

1. Rule 12, Fed. R. Civ. P.

"The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal sufficiency of the complaint." N. Star Int'l v. Ariz. Corp. Comm'n, 720 F.2d 578, 581 (9th Cir. 1983). "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir. 1990).

In order to survive dismissal for failure to state a claim, a complaint must contain more than a "formulaic recitation of the elements of a cause of action;" it must contain factual allegations sufficient to "raise a right to relief above the speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). It is insufficient for the pleading to contain a statement of facts that "merely creates a suspicion" that the pleader might have a legally cognizable right of action. Id. (quoting 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235-35

(3d ed. 2004)). Rather, the complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id.

In reviewing a complaint under this standard, the court "must accept as true all of the factual allegations contained in the complaint," construe those allegations in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. See Erickson v. Pardus, 551 U.S. 89, 94 (2007); Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert. denied, 564 U.S. 1037 (2011); Hebbe v. Pliler, 627 F.3d 338, 340 (9th Cir. 2010). However, the court need not accept as true legal conclusions cast in the form of factual allegations, or allegations that contradict matters properly subject to judicial notice. See Western Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981); Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir.), as amended, 275 F.3d 1187 (2001).

Pro se pleadings are held to a less stringent standard than those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). Pro se complaints are construed liberally and may only be dismissed if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Nordstrom v. Ryan, 762 F.3d 903, 908 (9th Cir. 2014). The court's liberal interpretation of a pro se complaint, however, may not supply essential elements of the claim that were not pled. Ivey v. Bd. of Regents of Univ. of Alaska, 673 F.2d 266, 268 (9th Cir. 1982); see also Pena v. Gardner, 976 F.2d 469, 471 (9th Cir. 1992). A pro se litigant is entitled to notice of the deficiencies in the complaint and an opportunity to amend, unless the complaint's deficiencies could not be cured by amendment. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

When ruling on a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), courts generally may not consider material outside the pleadings. Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001). If "matters outside the pleading are presented to and not excluded by the court," the district court may convert the 12(b)(6) into a motion for summary judgment under Rule 56.

Fed. R. Civ. P. 12(d). In that case, the court must first give both parties the opportunity "to present all the material that is pertinent to the motion." Id. "There are two exceptions to this rule: the incorporation-by-reference doctrine, and judicial notice under Federal Rule of Evidence 201." Khoja v. Orexigen Therapeutics, Inc., 899 F.3d 988, 998 (9th Cir. 2018). These procedures permit the court to consider extrinsic materials in determining whether plaintiff has stated a claim, without converting the Rule 12 motion to one for summary judgment. Id.

2. Judicial Notice

Federal Rule of Evidence Rule 201 allows a court to notice an adjudicative fact if it is "not subject to reasonable dispute." Fed. R. Evid. 201(b). A fact is "not subject to reasonable dispute" if it is "generally known," or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(1)-(2). Accordingly, "[a] court may take judicial notice of matters of public record without converting a motion to dismiss into a motion for summary judgment." Lee, 250 F.3d at 689 (quotation marks and citation omitted). The court may not, however, take judicial notice of disputed facts contained in such public records. Id. When taking judicial notice, a court must specifically identify which facts it is noticing, if any; "[j]ust because the document itself is susceptible to judicial notice does not mean that every assertion of fact within that document is judicially noticeable for its truth." Khoja, 899 F.3d at 999.

"Unlike rule-established judicial notice, incorporation-by-reference is a judicially created doctrine that treats certain documents as though they are part of the complaint itself. The doctrine prevents plaintiffs from selecting only portions of documents that support their claims, while omitting portions of those very documents that weaken—or doom—their claims." Id. at 1002. However, this doctrine does not apply to every external document mentioned within a complaint. A document is subject to the incorporation by reference doctrine "if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff's claim." Id. (citing United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003)). "However, if the document merely creates a defense to the well-pled allegations in the complaint, then that document did not necessarily form the basis of the complaint." Khoja, 899 F.3d at 1002.

Here, defendants ask the court to take judicial notice of multiple documents, audio recordings, and videos, including: (1) Redding Police Department Incident Report No. RPD23-037076 (Exhibit A); (2) City of Redding Claim for Money or Damages, dated February 29, 2024 (Exhibit B); (3) Notice of Rejection of Claim from City of Redding, dated March 24, 2024 (Exhibit C); (4) several sections of the California Vehicle Code and the California Penal Code (Exhibits D-L); (5) thirty-eight SHASCOM audio recordings of the November 4, 2023, traffic stop and subsequent arrest of plaintiff, provided to the court and plaintiff via a USB flash drive; and (6) seven Police Bodycam Videos, obtained from Redding Police Department Officers Carnahan, Rabon, Arnold, Dahnke, Guterding, and Upshaw, as well as Corporal Townsley, all recorded on November 4, 2023, during the traffic stop and subsequent arrest of plaintiff, provided to the court and plaintiff via a USB flash drive. ECF No. 23 at 2-3.

The court finds that all of the document and recordings are subject to judicial notice for the fact of their existence, though not for the truth of any facts which they may contain. The court grants the request for judicial notice insofar as the existence of each of these documents and recordings is deemed noticed. The police reports, videos, and recordings are not judicially noticeable for the truth of facts they contain.

3. Incorporation by Reference

Defendants also invoke the incorporation by reference doctrine. ECF No. 23 at 5. "[W]ithin the Ninth Circuit, district courts are split on whether the incorporation-by-reference doctrine allows a court to consider an officer's body-camera video in a Rule 12 motion." Lee v. City of San Diego, No. 18-cv-0159 W (BLM), 2019 WL 117775, at *4 (S.D. Cal. Jan. 7, 2019). In Lee, the district court reasoned that the Ninth Circuit's Khoja decision, referenced above, clarifies that when it comes to incorporation of video or audio recordings of an incident at issue in a complaint, it is not enough that the video or audio provide an understanding of the incident at issue. Instead, "the doctrine requires the complaint to refer to the material or that plaintiff's claims are *based* on the material." Lee, No. 2019 WL 117775, at *4 (emphasis original). The complaint in Lee was based on events surrounding the plaintiff's arrest, but did not refer to body

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camera videos, and accordingly the court did not incorporate the videos by reference. The circumstances are very different in the case now before this court.

The operative First Amended Complaint presents a relatively unique situation in the experience of the undersigned, because it repeatedly and extensively refers to and relies upon the officers' body camera footage and related audio recordings. The following is a non-exhaustive sample of plaintiff's specific references to the video recordings in the First Amended Complaint (ECF No. 5), by page and line number: 2:23 ("In reviewing video, and audio evidence the Officer's Dahnke, Upshaw, Townelsy are being witnessed Verbally threatened to use Excessive force . . ."); 3:1 ("Video Evidence shows . . ."); 3:9 ("Officer Upshaw, who was caught on his own axon body camera video . . ."); 3:12 ("Plaintiff identified himself to both officers by name as documented on body camera"); 3:22 ("Officer can be heard on video (face concealed) mentioning . . ."); 4:25 ("documented on camera, the officers . . . knocking plaintiffs phone out of plaintiffs right hand, breaking plaintiffs arm . . ."); 5:13 ("Body Camera shows Officers . . . pulling Plaintiff over in a dark secluded area . . .").

Plaintiff not only acknowledges the existence of the body camera footage, but he also repeatedly invokes the videos *as documentation of* his factual allegations. On these specific facts, the court concludes that the seven Police Bodycam Videos, obtained from Redding Police Department Officers Carnahan, Rabon, Arnold, Dahnke, Guterding, and Upshaw, as well as Corporal Townsley, all recorded on November 4, 2023, during the traffic stop and subsequent arrest of plaintiff, are subject to the doctrine of incorporation by reference. This body camera footage has therefore been reviewed for purposes of the motion to dismiss, and the contents of the recordings is deemed incorporated into the First Amended Complaint.

B. Bane Act Claim

"The Tom Bane Civil Rights Act, 1987 Cal. Stat. 4544, was enacted in 1987 to address hate crimes. The Bane Act civilly protects individuals from conduct aimed at interfering with rights that are secured by federal or state law, where the interference is carried out by threats, intimidation or coercion." Reese v. County of Sacramento, 888 F.3d 1030, 1040 (9th Cir. 2018) (internal quotations omitted). To support a Bane Act claim, a plaintiff must allege facts that show

the defendant had a "specific intent" to violate plaintiff's constitutional rights. Sandoval v. County of Sonoma, 912 F.3d 509, 520 (9th Cir. 2018). To determine whether a defendant acted with specific intent, the court looks at two factors: First, "[i]s the right at issue clearly delineated and plainly applicable under the circumstances of the case," and second, "[d]id the defendant commit the act in question with the particular purpose of depriving the citizen victim of his enjoyment of the interests protected by that right?" Cornell v. City & County of San Francisco, 17 Cal. App. 5th 766, 804 (2017), as modified (Nov. 17, 2017).

Here, plaintiff asserts that the "video, and audio evidence of the Officer's Dahnke, Upshaw, Townsley are being witness Verbally threatened to use Excessive force beyond what is necessary on plaintiff to pull him out of his vehicle" rather than verbally asking plaintiff to step out of the vehicle. ECF No. 5 at 2-3. The court has reviewed the video. After a lengthy exchange between plaintiff and the officers during which the officers asked plaintiff to identify himself and plaintiff refused, the officer speaking with plaintiff says "so that's where we're at. I'm going to give you the option to either identify yourself or you're going to have to get out of the car." AXON Body4 D01A08103 at 10:50. The officer then opens the car door and instructs plaintiff to put his hands on his head, which plaintiff does not do. Id. at 11:00. Two officers then reached in the vehicle, taking plaintiff by the arms, and pull him out of the car and onto the floor, where he is restrained and handcuffed. 11:40. As the handcuffs are being placed on him, plaintiff says "my arms and shit are fucking broken." Id. The video that plaintiff cites in his complaint does not align with plaintiff's assertion that the officers verbally stated that they intended to use excessive force beyond what was necessary. Because plaintiff's only basis for a Bane Act claim was the verbal declaration of intent to violate plaintiff's rights, which is belied by the very video plaintiff relies upon, this claim must be dismissed without leave to amend because plaintiff does not and cannot state a claim upon which relief can be granted.

C. Plaintiff's Constitutional Claims

Plaintiff asserts claims for constitutional violations pursuant to 42 U.S.C. § 1983, which "is a method for vindicating federal rights elsewhere conferred." Albright v. Oliver, 510 U.S. 266, 271 (1994). To state a claim under §1983, a plaintiff must allege facts from which it may be

inferred (1) he was deprived of a federal right, and (2) a person or entity who committed the alleged violation acted under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988); Williams v. Gorton, 529 F.2d 668, 670 (9th Cir. 1976). A plaintiff must identify a specific injury was suffered and show a causal relationship between the defendant's conduct and the injury. See Rizzo v. Goode, 423 U.S. 362, 371-72 (1976). An individual deprives another of a federal right "if he does an affirmative act, participates in another's affirmative acts, or omits to perform an act which he is legally required to do so that it causes the deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Each of plaintiff's constitutional claims is addressed below.

1. Plaintiff Does Not State a First Amendment Claim

Plaintiff's First Amendment claim is based on his contention that he was unlawfully prevented from photographing or videotaping the police during his interaction with them. ECF No. 5 at 4. Defendants move to dismiss, asserting that plaintiff does not have a viable cause of action. ECF No. 15-1 at 5. Defendants further assert leave to amend is not warranted because the officer defendants have qualified immunity. Id. at 9. Government officials are immune "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). "Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably." Pearson v. Callahan, 555 U.S. 223, 231 (2009). Ideally, qualified immunity is determined at the earliest possible stage in litigation to avoid unnecessary burden and expense. Hunter v. Bryant, 502 U.S. 224, 227 (1991).

Federal law has long been clear that there is a First Amendment Right to photograph and record "matters of public interest," including interactions with police officers in public spaces. Fordyce v. City of Seattle, 55 F.3d 436, 439 (9th Cir. 1995); Askins v. U.S. Dep't of Homeland Sec., 899 F.3d 1035, 1044 (9th Cir. 2018); see also, Reed v. Lieurance, 863 F.3d 1196, 1211 (9th Cir. 2017) (referencing "the First Amendment-protected activity of observing a government

operation" and citing Fordyce as "recognizing a 'First Amendment right to film matters of public interest' – in that case, police actions during a public demonstration" (quoting Fordyce, 55 F.3d at 439)). However, the established law regarding the right to record police interactions addresses the rights of journalists, observers and bystanders—it does not recognize or directly address the right of an individual to record while detained.

The facts related to the removal of plaintiff's phone in the complaint are somewhat unclear and are inconsistent with the body camera footage. Regardless, it is clear that plaintiff was detained by the officers during the period at issue. As this court explained in detail in Alston v. City of Sacramento, No. 2:21-cv-2049 DAD AC PS, 2023 WL 6626174, at *11, 2023 U.S. Dist. LEXIS 182975 (E.D. Cal. Oct. 11, 2023), report and recommendation adopted, No. 2:21-cv-2049-DAD-AC-PS, 2024 WL 733260 (E.D. Cal. Feb. 22, 2024), there is not a clearly established right for a detained person to videotape or photograph police while actively detained. This is because the First Amendment is subject to "time, place and manner restrictions" on otherwise protected First Amendment activity. See Askins, 899 F.3d at 1044. For example, in Kelly v. Borough of Carlisle, the Third Circuit found that there is not a clearly established right for a person to videotape police while they are pulled over on a traffic stop, because traffic stops have been characterized as an "inherently dangerous situation." 622 F.3d 248, 262 (3rd Cir. 2010). The Kelly court noted that the right to videotape police "is subject to reasonable time, place, and manner restrictions, as long as they are 'justified without reference to the content of the regulated speech, ... are narrowly tailored to serve a significant governmental interest, and ... leave open ample alternative channels for communication of the information." Id. (quoting Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989)).

Assuming that the Officers did prevent plaintiff from filming as he alleges,[1] the

[1] It appears from the video footage cited by plaintiff that he was actually allowed to record the entire encounter with the officers. At AXON BODY 4 D01A07333, plaintiff is debating with the officers, and says "that would be considered racial profiling, and that's exactly why I'm filming this video . . . I'm filming this because . . .," and Officer Dahnke replies, "that's fine, we're filming it too." 5:00-5:06. Another officer is heard stating, "you're free to record" and Officer Dahnke says, "we're happy to have that." Later in the encounter, at 7:08 in the video footage, plaintiff aims the camera at Dahnke with the phone light on, and Officer Dahnke says, "please put

undersigned is skeptical of plaintiff's assertion that he had a First Amendment right to record while being actively detained and questioned by police. However, this court need not decide that question because it is apparent that the officer defendants are entitled to qualified immunity. There was, at the time of plaintiff's detention, no "clearly established" First Amendment right for a person being detained for investigatory purposes to personally record his own detention. Accordingly, the defendants are immune from liability See Mullenix v. Luna, 577 U.S. 7, 13 (2015) (a right is not clearly established for qualified immunity purposes unless existing precedent "squarely governs" the specific facts at issue). Accordingly, the court agrees with defendants that this claim must be dismissed without leave to amend.

2. Plaintiff Does Not State a Fourth Amendment Claim

Plaintiff's Fourth Amendment claim alleges three distinct violations: (1) unlawful stop, detention, and arrest; (2) use of excessive force; and (3) unlawful seizure of property. ECF No. 5 at 5-10. Each is addressed in turn.

a. Unlawful Stop, Detention, and Arrest

Plaintiff alleges that defendants violated the Fourth Amendment by unlawfully stopping him on a "hunch" that he was driving without a front plate. Plaintiff agues this "hunch" was manufactured to give the appearance of probable cause. ECF No. 5 at 5-6. Plaintiff continues with a narrative explanation of the encounter, but the thrust of the claim is that defendants initiated an unlawful traffic stop without probable cause. Id. The Fourth Amendment prohibits unreasonable searches and seizures by the government. U.S. Const. amend. IV. "The Fourth Amendment 'applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest.'" United States v. Montero-Camargo, 208 F.3d 1122, 1129 (9th Cir. 2000) (quoting United States v. Brignoni-Ponce, 422 U.S. 873, 878 (1975)). "In order to satisfy the Fourth Amendment's strictures, an investigatory stop by the police may be made only if the officer in question has 'a reasonable suspicion [or probable cause] supported by articulable facts that criminal activity may be afoot[.]'" Montero-Camargo, 208 F.3d at 1129 (quoting

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the phone down." However, it is not clear that plaintiff turned off the camera when he lowered it, and it does not appear that plaintiff was ever instructed to stop recording.

United States v. Sokolow, 490 U.S. 1, 7 (1989)). "A traffic violation alone is sufficient to establish reasonable suspicion." United States v. Choudhry, 461 F.3d 1097, 1100 (9th Cir. 2006).

Police may conduct traffic stops based on "individualized reasonable suspicion or probable cause of unlawful conduct." Tarabochia v. Adkins, 766 F.3d 1115, 1121 (9th Cir. 2014)(internal citations omitted). To determine whether the officers had "reasonable suspicion" or "probable cause" to initiate the traffic stop is an "objective" inquiry, concerned only with whether the stop was "objectively reasonable" under the circumstances. Ornelas v. United States, 517 U.S. 690, 696 (1996). Courts may not delve into "concerns about improper motives and pretext" to invalidate otherwise lawful stops supported by reasonable suspicion or probable cause. Ashcroft v. al-Kidd, 563 U.S. 731, 739 (2011) (citations omitted). The probable cause inquiry does not depend on whether the officer was ultimately correct about their belief that a violation of the law was occurring. "Officers can have reasonable, but mistaken, beliefs as to the facts establishing the existence of probable cause or exigent circumstances, for example, and in those situations courts will not hold that they have violated the Constitution." Saucier v. Katz, 533 U.S. 194, 206 (2001).

Here, AXON BODY 4 D01A07333 shows plaintiff being pulled over by Officer Dahnke, who can be heard saying, "Hello! Hey, Reding Police Department, I pulled you over because you don't have a front plate on your car." Plaintiff responded, "it probably fell off, its probably on the road somewhere." Id. at 1:14. Officer Dahnke states she will "take a peek again" and says, "well it is on there, it's just not visible, that's my mistake there." Id. at 1:20. She then states, "do you mind if I just look at your drivers license and then I'll get out of here." Id. Another officer can be heard saying "it looks like you got illegally tinted windows too" to which plaintiff responds the tints are legal, and he believes he is being racially profiled. Id. at 1:45. After some back and forth, plaintiff states "the license plate is visible because the headlight's on." Id. at 3:20.

The officers continue to explain that the other reason for probable cause is that the windows are tinted, citing §26708 of the California Vehicle Code, and plaintiff disputes that he is responsible for the tint because that is the way the car came from the dealer. Id. A verbal exchange about the legality of and responsibility for the tint ensues. Officer Dahnke says, "Sir,

I'm not even asking you to search the vehicle." 5:44. After some further back and forth, plaintiff says "I'm from Baltimore, Maryland." Id. at 6:00. An officer then asks plaintiff if his name is "Michael Smith" and plaintiff states "I'm not going to give you guys any more information." Id. at 6:07.

After more conversation, Officer Dahnke says "Sir, you must legally identify yourself." Id. at 6:50. Officer Dahnke continues to ask plaintiff if his name is Michael. Id. at 9:55. Officer Dahnke says, "All you have to do is identify yourself. I'm done arguing, and I'm going to have to pull you out of the car to detain you. I do not want to do that. But I have to identify you." Id. at 10:20-10:33. Plaintiff again says, "I don't have to provide any identification." Id. at 10:50. Plaintiff is again asked if he is Michael Smith from Maryland and he responds, "that's not my name." 11:00-11:02. Plaintiff demands a supervisor, and Officer Dahnke explains that one has already been called and is on his way. 11:40. The supervisor then approaches the window and tells the plaintiff that it appears his "ID expired in 2002." 13:27. The supervisor continues to ask plaintiff to identify himself and tells plaintiff that per state law plaintiff is required to identify himself, explaining that "if you are an active felon and I let you go" then there is a problem. 17:16. Plaintiff continues to refuse to identify himself. The officer states, "See, this behavior makes us think you're trying to hide something," and continues to ask for identification so that plaintiff can go on his way. Id. at 17:50.

Plaintiff and the supervising officer continue to discuss whether there was probable cause for plaintiff to be pulled over. The supervising officer goes to look at the front plate and notes there is spray paint on it, which may have been the reason the plate was not initially visible to Officer Dahnke. Id. at 19:50. Plaintiff explains that there was spray paint there because he spraypainted his car. Id. The supervising officer explained "if it's nonreflective, they can't see anything." Id. at 20:02. The supervising officer again stated that he would like to get plaintiff "out of here as soon as possible" but they first needed him to confirm his identification. Id. at 20:18. After continued back and forth, the officer again says, "show us your ID and we'll let you go about your business." Id. at 21:25. After continued discussion during which plaintiff refused to identify himself, he was instructed that he must either identify himself or he was going to be

arrested. Id. at 22:50. At 23:38 on the AXIOM camera, the supervising officer open's plaintiff's door to initiate the arrest process.

It is clear from the facts presented in the complaint and from the incorporated body camera footage that there was probable cause for both the initial stop and the arrest. Indeed, without looking to the incorporated camera footage, plaintiff's complaint states that Officer Dahnke identified the missing front plate as the reason for the stop, stating "Officer Dahnke walked based on a hunch plaintiff was driving without a front plate." ECF No. 5 at 5. Again, even if Officer Dahnke was ultimately wrong and plaintiff did have a front plate, probable cause does not depend on the Officer being ultimately correct so long as the belief was reasonable under the circumstances. Saucier, 533 U.S. at 206. Plaintiff's conclusory argument that the asserted probable cause was a pretext for racial profiling does not undermine this conclusion.

As to the detention and arrest, the facts also clearly demonstrate probable cause. "When stopping an individual for a minor traffic violation, 'an officer's mission includes ordinary inquiries incident to the traffic stop.'" United States v. Evans, 786 F.3d 779, 786 (9th Cir. 2015). (quoting Rodriguez v. United States, 575 U.S. 348, 354 (2015)). These involve "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance," and each share "the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly." Rodriguez, 575 U.S. at 354. Here, the officers acted reasonably and within the bounds of an ordinary traffic stop in asking plaintiff, the driver of the vehicle, to identify himself. Plaintiff's prolonged refusal to do so added probable cause in support of detention and arrest: the officers repeatedly told him that his behavior indicated he was trying to hide something, and that if he would just identify himself, he would be free to go. Because there was clear probable cause for the officers to stop, detain, and ultimately arrest plaintiff, plaintiff does not and cannot state a Fourth Amendment claim on these bases. Accordingly, the claim should be dismissed without leave to amend.

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b. Excessive Force

Plaintiff's complaint states "it is documented on video plaintiff's vehicle was completely shut off, hands on the steering wheel recording the interaction with the supervisor, 10 minutes past, video shows the supervisor Opening Plaintiffs car door, as 4 cops rush plaintiff's vehicle (swat style), using Excessive Force by participant Officer Upshaw, Chase Arnold, Gutering in pulling Plaintiff out of his vehicle . . . using more force than necessary to apprehend Plaintiff[.]" ECF No. 5 at 8. The Fourth Amendment requires that "all force—lethal and non-lethal—must be justified by the need for the specific level of force employed." Bryan v. MacPherson, 630 F.3d 805, 825 (9th Cir. 2010). "To determine the objective reasonableness of a particular use of force is a three-step inquiry." Garlick v. County of Kern, 167 F. Supp. 3d 1117, 1144 (E.D. Cal. 2016), (citing Graham v. Connor, 490 U.S. 386, 396 (1989)). First, courts assess the "quantum of force used" by considering the "type and amount of force inflicted." Drummond ex rel. Drummond v. City of Anaheim, 343 F.3d 1052, 1056 (9th Cir. 2003). Second, the court looks to the government's countervailing interests at stake. Graham, 490 U.S at 396. Third and finally, the court must "weigh in balance" whether the degree of force used was warranted by the government interest at stake. Id.

Here, the complaint on its face does not provide enough facts to state an excessive force claim. It relies on the conclusory statement that the officers used more force than was reasonably necessary, without giving details as to precisely what type of force was used by whom or explaining how it was excessive. ECF No. 5 at 8. Plaintiff alleges that he was "pull[ed]" from the car, which may be sufficient to allege that force was used but is not sufficient to support an inference the force was more than what was necessary under the circumstances. This would be reason enough to dismiss the claim, perhaps with leave to amend, but plaintiff has specifically relied on and incorporated video footage that plainly shows no excessive force was used. Accordingly, plaintiff cannot state a claim upon which relief can be granted.

With respect to use of force, the relevant footage at AXON BODY 401A07333 begins with the supervising officer opening plaintiff' door at 23:35, and then stepping off to the side with his back against the door. Plaintiff is then instructed to put his hands on his head, and plaintiff is

seen leaning further into the vehicle toward the passenger side. Id. at 23:42. Two officers standing next to the vehicle and plaintiff's open door reach in and grab one of plaintiff's arms and the supervising officer takes plaintiff's other arm, and they place plaintiff onto the ground as he says, "get off me." Plaintiff's hands are placed behind his back while plaintiff is on the ground struggling. As plaintiff is being restrained at each leg and handcuffed, he states "I was injured in Iraq and shit, my arms and shit are fucking broken and y'all aggravating my shit even more." Id. at 24:15. Plaintiff is assisted off the ground and walked towards the police car and is told to separate his feet. Id. at 25:00. The officers examine plaintiff's handcuffs and identify that one is latched tightly. Id. at 25:14. Officers Upshaw and Dahnke loosen the cuff. Id. at 25:33.

Plaintiff is standing and does not appear in any physical distress as he continues to challenge the officers' probable cause. Id. At 25:35, Officer Upshaw instructs plaintiff to open his hands, and plaintiff says "you guys are squeezing the shit out of my fucking arms" to which Officer Upshaw replies that they are in the process of adjusting the handcuffs. Officer Upshaw sates, "There, I can put three fingers inside of that handcuff." Id. Plaintiff is instructed to widen his stance and responds "my feet are spread as far as they are going to go! I have a broken foot!" Id. at 27:00. Plaintiff is escorted to the back of the police car, is seated and seat belted without incident, and the window is rolled down for him. Id. at 28:00-29:34.

Due to plaintiff's complaints that he had broken his leg and his foot, he is taken to the hospital. Id. at 41:10. Plaintiff states, "I said my foot was broken from me serving in Iraq." Id. at 41:15. He states he is "disabled from head to toe." Id. Plaintiff gets out of the vehicle on his own and is walked down to hospital registration by the officers. Id. Officer Dahnke is heard saying to hospital personnel, "We're here for a medical clearance. There were no control holds but he's complaining of, he said in the past . . .we're just making sure he's physically ok . . . it's all old stuff." Id. at 42:00-42:28. Plaintiff's face is visible on the video, there are no obvious injuries, and he does not appear to be in any acute physical distress. Id. at 43:48. Plaintiff asks for his left knee to be photographed and instructs Officer Dahnke to roll up his pant leg. Id. at 44:10. Officer Dahnke does so and reveals a small abrasion on plaintiff's knee. Id. at 44:38.

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The video on which plaintiff relies in his complaint undermines his claim that the force used was objectively excessive. As to the first factor, the court notes that force was not initiated with plaintiff until more than 20 minutes into the encounter during which he was repeatedly warned that if he did not identify himself, he would be arrested. When force was initiated, plaintiff did not immediately follow the officers' instruction to place his hands on his head and was therefore removed from a seated position in his vehicle directly on to the ground: a distance of not more than a few feet. As plaintiff struggled, he was physically restrained. As soon as handcuffs were placed, plaintiff was stood up and he walked, escorted, to the police vehicle. The totality of the circumstances demonstrate that minimal force was used, and the force that was used was objectively reasonable in light of plaintiff's resistance to the investigation. Accordingly, the undersigned concludes the claim should be dismissed without leave to amend.

c. Unlawful Seizure

Plaintiff alleges that "documented on video, and screenshot captured shows the same officer Upshaw unlawfully seizing (theft of property) the Plaintiff's only car key, removing it from the key chain that contained Plaintiffs house keys, and intentionally threw them onto the ground as gathered as video evidence, the officer intentionally did perform this act out of malice, as a means to deprive the Plaintiff's permanently of his vehicle during the time it was being unlawfully impounded, and towed." ECF No. 5 at 8-9. "While taking and destroying personal property is a seizure . . . such seizures are only unlawful if they are unreasonable. To assess reasonableness, courts must balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion." Lavan v. City of Los Angeles, 797 F. Supp. 2d 1005, 1013 (C.D. Cal. 2011) (internal citations omitted).

Plaintiff specifically invokes video footage of Officer Upshaw, who was in the police vehicle that initiated the traffic stop with Officer Dahnke. ECF No. 5 at 8. Body camera footage at D01A06303 shows the inventory search of plaintiff's vehicle. At 12:30, an officer can be seen taking a key ring with multiple keys and keychains from inside plaintiff's car. The officer looks at the keys, removes one key, which appears to be a car key, and another item from the ring.

While holding the items, he walks toward the trunk of the car and looks at it. Id. at 12:45. The officer then asks another officer, "do you see a trunk release over there?" The officer walks back to the passenger side of the car and drops what appears to be a keyless entry car remote on the passenger seat. Id. at 13:10. He then drops what appears to be the removed car key on the passenger seat as well. Id. at 13:23. With those items resting in the front seat of the car, the officer goes back to inspect the trunk. Id. at 13:40. The video does not show any officer throwing the keys on the floor.

AXON BODY D01A08103 provides another angle of the vehicle inventory search: from the drivers' side, an officer's arm is shown reaching over from the open passenger side door to take the keys out of the ignition at 13:50. A few second later, the officer with the keys can be seen, viewed from across the car, holding up the key ring and looking at the keys and twisting an item or two off the ring. From this angle, it appears the officer drops the keys in a downward direction, and then walks to the back of the vehicle. When he returns, he reaches into the passenger seat with the keys. At no time does an officer throw the keys on the floor. The video shows plaintiff's keys were placed in the vehicle. Because this claim is based only on facts that are undercut by the incorporated video on which plaintiff relies, the court concludes that plaintiff cannot state a claim upon which relief can be granted, and that this claim should be dismissed.

3. Plaintiff Does Not State a Fifth Amendment Claim

Plaintiff asserts that his Fifth Amendment rights were violated, as shown in video and audio, when officers pulled him out of his vehicle and detained him for refusing to identify himself. ECF No. 5 at 10. The Fifth Amendment provides that "[n]o person … shall be compelled in any criminal case to be a witness against himself." U.S. Const., amend. V. This court need not determine whether plaintiff had a Fifth Amendment right not to provide his name to the officers—a highly dubious proposition.[2] The Ninth Circuit has squarely held that a Fifth

[2] The Supreme Court has long recognized that questions about identity are a permissible part of routine investigative stops. See United States v. Hensley, 469 U.S. 221, 229 (1985); Hayes v. Florida, 470 U.S. 811, 816 (1985). State laws requiring individuals who are stopped for questioning to provide identification to the police violate neither the Fourth nor Fifth Amendments. Hiibel v. Sixth Judicial Dist. Court, 542 U.S. 177, 187-188, 190-191 (2004). The Fifth Amendment protects disclosure of identity only in "unusual circumstances" in which the

Amendment violation will not support a Section 1983 claim unless the plaintiff made a statement that was used against him in a criminal proceeding. Chavez v. Robinson, 12 F.4th 978, 999 (9th Cir. 2021). There are no allegations here that any of plaintiff's statements have been used against him. The video evidence that plaintiff invokes shows plaintiff voluntarily speaking with police throughout the interaction, while refusing to identify himself. There are no facts in the complaint that can give rise to any plausible Fifth Amendment claim. This claim should be dismissed.

4. Plaintiff Does Not State a Fourteenth Amendment Claim

Plaintiff argues that his Fourteenth Amendment rights were violated because he was racially targeted, and the police have stopped him on more than 5-7 occasions for the sole purpose of identifying him. ECF No. 5 at 12. Plaintiff states that the Racial and Identity Profiling Advisory Board has identified uninvestigated complaints of racial profiling against the Redding Police Department. Id. at 13. Plaintiff alleges his race was intentionally concealed from police reports so that the officers could hide their racial profiling. Id. Plaintiff alleges there were several prior interactions between himself and police which reflect a racially discriminatory pattern: (1) on April 7, 2023 officers followed him home and night and ran his license plates before leaving when the officer noticed he was recording; (2) on March 21, 2023, an officer saw plaintiff trying to get gas and asked plaintiff to identify himself, but then the officers refused to identify themselves so plaintiff could make a complaint; (3) on January 17, 2024 plaintiff was being followed by police for about 20 minutes before the police car switched lands and drove away; and (4) on February 8, 2024, plaintiff was followed by officers until he parked. The officers parked nearby and asked a Caucasian woman sitting at a bus stop of plaintiff tried to sell her drugs or harass her, and then followed him in his car again until eventually driving away. Id. at 14-16.

The Fourteenth Amendment provides no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. "Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause."

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name itself has incriminating potential beyond the scope of the stop. Id. at 190-191.

Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265 (1977). A plaintiff need not show "the challenged action rested solely on racially discriminatory purposes." Id. Instead, a plaintiff must show the discriminatory purpose was a "motivating factor" for the challenged action. Id. at 265–66. "Racial profiling can constitute a deprivation of a citizen's right to equal protection under the law." James v. City of Seattle, 2011 WL 6150567 at *13 (W.D. Wash. Dec. 12, 2011); see also Whren v. United States, 517 U.S. 806 (1996) (holding that claims asserting selective enforcement of the law based on considerations such as race are properly brought under the Equal Protection Clause). To state a claim for racial profiling in violation of the Equal Protection Clause, "a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based on membership in a protected class." Thornton v. City of St. Helens, 425 F.3d 1158, 1166-67 (9th Cir. 2005) (citation and quotations omitted).

The allegations in the complaint and the video cited by and relied upon by plaintiff in the complaint are not sufficient to establish a Fourteenth Amendment violation. Plaintiff must provide more than conclusory assertions that he was pulled over on the basis of his race. As set forth above, the officers repeatedly state in the video footage that plaintiff was pulled over for a missing front plate. They also explain that they could not have pulled him over on the basis of his race because it was dark out and plaintiff's windows were tinted, so they could not see inside the vehicle when they were pulling him over. AXON BODY 4 D01A07333 at 13:07. Plaintiff does not plausibly allege that the officers "acted with an intent or purpose" to discriminate against him. Accordingly, this claim must be dismissed.

5. Plaintiff Does Not State a Municipal Liability Claim

A municipality or government entity, like the Redding Police Department, cannot be held liable for claims brought under 42 U.S.C. §1983 based on respondeat superior or any other theory of vicarious liability. Board of County Com'rs of Bryan County, Oklahoma v. Brown, 520 U.S. 397, 403 (1997) (no vicarious liability under § 1983). Municipal liability is therefore limited to harms caused by an official municipal policy, or a custom or practice of the entity that has the force of policy. Monell v. New York City Dept. of Social Services, 436 U.S. 658, 690-91 (1978).

Plaintiff must plead and ultimately prove that he suffered a constitutional injury that was caused by the offending municipal policy. Connick v. Thompson, 563 U.S. 51, 60-61 (2011).

Here, plaintiff's generalized allegations of illegal conduct are insufficient to state a claim that the Redding Police Department maintained an official policy, custom, or practice that violated plaintiff's constitutional rights. Further, because plaintiff has not stated a claim that any of his constitutional rights were violated at all, it is clear he cannot state a Monell claim. Accordingly, any Monell claim must be dismissed.

D. Plaintiff Does Not State an ADA or Rehabilitation Act Claim

Plaintiff alleges his rights under Americans with Disabilities Act and the Rehabilitation Act were violated when plaintiff, as "seen on the video footage, audio, and camera footage the Plaintiff had assisted walking device in my right hand the officers knocked it out of my right hand, with my phone as it was recording as I was prepared to exit my vehicle the officers proceeded to yank my arm slightly out of my socket and with force while executing a breaking in my elbow." Plaintiff alleges he "informed them 'I needed my cane as an accommodation but they did not listen." ECF No. 5 at 18-20. Plaintiff also alleges the officers refused to get him medical treatment after he informed them that he had broken his arm. Id. at 18. The video incorporated by plaintiff is set forth in detail above. It does not show officers knocking plaintiff's cane out of his hand. It does show that plaintiff was driven directly to the hospital after he was arrested.

Title II of the ADA prohibits a public entity from discriminating against a qualified individual with a disability on the basis of that disability. 42 U.S.C. § 12132; Weinreich v. L.A. County Metro. Transp. Auth., 114 F.3d 976, 978 (9th Cir. 1997). As "[t]here is no significant difference in analysis of the rights and obligations created by the ADA and the Rehabilitation Act," the Court analyzes these claims simultaneously. Zukle v. Regents of Univ. of Cal., 166 F.3d 1041, 1045 (9th Cir.1999). Consistent with "the majority of circuits to have addressed the question," the Ninth Circuit has held "that Title II applies to arrests." Sheehan v. City and County of San Francisco, 743 F.3d 1211, 1232 (9th Cir. 2014). "The Ninth Circuit recognized two types of ADA claims applicable to arrests: (1) wrongful arrest, where police wrongly arrest someone with a disability because they misperceive the effects of that disability as criminal

activity, and (2) reasonable accommodation, where police fail to reasonably accommodate the person's disability in the course of investigation or arrest, causing the person to suffer greater injury or indignity in that process than other arrestees." Bresaz v. County of Santa Clara, 136 F. Supp. 3d 1125, 1132 (N.D. Cal. 2015) (internal citations omitted). The allegations in plaintiff's complaint, including the facts shown by the video incorporated into the complaint, clearly demonstrate that plaintiff cannot state an ADA claim or a Rehabilitation Act claim. These claims must be dismissed.

III. Leave to Amend Is Not Appropriate

Leave to amend is not appropriate in this case. Ordinarily, pro se litigants are granted liberal leave to amend. "Valid reasons for denying leave to amend include undue delay, bad faith, prejudice, and futility." California Architectural Bldg. Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988). Here, given the facts alleged and the incorporation of video evidence into the complaint, it is clear that there are no additional facts that plaintiff can allege in order to sufficiently support any of his legal claims. The undersigned finds that leave to amend would be futile and should therefore not be granted.

IV. Pro Se Plaintiff's Summary

It is recommended that your case be dismissed because the facts of your case, taken from the complaint and the videos that you rely on in your complaint, show that you cannot satisfy the elements of any of your legal claims. The magistrate judge is therefore recommending that you not be given further leave to amend. If you disagree with this recommendation, you may file objections for the district judge to consider within 21 days. The district judge will make the final decision.

V. Conclusion

Accordingly, the undersigned recommends that defendants' motion to dismiss (ECF No. 15) be GRANTED and that this case be DISMISSED and closed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days after being served with these findings and recommendations, any party may file written

objections with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections within the specified time may waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

DATED: April 3, 2025

ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE